

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF WEST VIRGINIA  
MARTINSBURG**

**DAVID GOLDMAN and  
ADAM GOLDMAN,**

Plaintiffs,

v.

**CIVIL ACTION NO: 3:13-CV-152  
(JUDGE GROH)**

**PHILLIPS & SONS DRILLING, INC.  
and MID MARYLAND EXCAVATING, INC.,**

Defendants.

**ORDER DENYING JOINT MOTION IN SUPPORT OF MEDIATION**

Currently pending before the Court is the parties' Joint Motion in Support of Mediation [Doc. 96], filed on June 6, 2014. In this motion, the parties request that the Court order that non-parties to this action—USAA Insurance Company and National Subrogation Services—attend a mediation session scheduled for June 24, 2014. The parties contend that the attendance of these entities is needed because USAA is seeking repayment from the Defendants of an insurance claim paid to the Plaintiffs for the property damage underlying this case.

This Court lacks the authority to issue the relief requested. Under Federal Rule of Civil Procedure 16(a), this Court can “order the attorneys and any unrepresented parties to appear for one or more pretrial conferences for such purposes as . . . facilitating settlement.” This rule does not authorize the Court to order non-parties to attend mediation. Local Rule of Civil Procedure 16.06(c) reinforces this principle as it mandates only that “counsel and the parties or their representatives who have full authority to make

final and binding decisions” attend mediation. Accordingly, the Court **DENIES** the Joint Motion in Support of Mediation because the Court cannot order that non-parties to this matter attend mediation. See Lamastus v. Bethany Home Ass’n of Lindsborg, Kan., Civil Action No. 05-1309-MLB, 2006 WL 1360578, at \*3-4 (D. Kan. May 18, 2006) (denying motion to sanction non-party for failing to attend mediation in person given that Federal Rules of Civil Procedure and local rules did not mandate non-party’s attendance).

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record.

**DATED:** June 9, 2014.

  
GINA M. GROH  
UNITED STATES DISTRICT JUDGE